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09/937,457	09/24/2001	Franz-Josef Becker	512100-2020	9510

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EXAMINER

RINEHART, KENNETH

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,457

Applicant(s)

BECKER ET AL.

Examiner

Kenneth B Rinehart

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claims 3 and 8 are objected to because of the following informalities: Claim 3 and 8 refer to sensitively. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 13-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 refers to “if desired” which renders the claim indefinite.

Claims 20-24 provides for the use of a sheet form, activatable drying device, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 20-24 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3749

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 11, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fraioli et al. Fraioli et al shows a sheet form matrix having at least one regenerable desiccant present therein (col. 1, lines 49-59), said regenerable desiccant is selected from the group consisting of calcium chloride, calcium sulfate, aluminum oxide, sodium sulfate, and polyvinylpyrrolidone (col. 2, lines 53-60), said regenerable desiccant is present in an amount of between 0.5 and 70% in said sheet matrix form (based on the overall weight of the matrix (col. 3, lines 49-55), for reducing or maintaining constant a defined moisture content of a closed gas space surrounding said device (fig. 5).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 8, 10, 11, 13, 14, 20, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Grace. Grace shows a sheet form matrix having at least one regenerable desiccant present therein, a pressure sensitive adhesive layer, the desiccant matrix is pressure sensitive adhesive, said sheet form matrix comprises a polymeric material, said sheet form matrix comprises a polymeric material, said regenerable desiccant is present in an amount of between 0.5 and 70% in said sheet matrix form (based on the overall weight of the matrix), preparing a desiccant matrix comprising a regenerable desiccant in nonactive form, with no additional measures to reduce the moisture content of the ambient air space, if desired performing further steps for producing a sheet form drying device comprising said desiccant matrix, these steps likewise being performed without additional measures to reduce the moisture content of the ambient air space, and subsequently activating the sheet form drying device, said activating takes place by storing the sheet form drying device at increased temperature, for reducing or

Art Unit: 3749

maintaining constant a defined moisture content of a closed gas space surrounding said device, removing molecules of organic solvents and or odorous substances form a gas space surrounding said device (col. 1, line 36- col. 3, line 24).

Claims 1, 7, 9-10, 13, 14, 16, 17, 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Clapham. Clapham shows a sheet form matrix having at least one regenerable desiccant present therein (page 2, line 13, page 6, lines 7-15), the desiccant matrix is elastic (page 3, lines 10-11), said regenerable desiccant is selected from the group consisting of calcium chloride, calcium sulfate, aluminum oxide, sodium sulfate, and polyvinylpyrrolidone (page 2 ,lines 17-39, page 3, lines 1-8), said sheet form matrix comprises a polymeric material (page 2 ,lines 17-39, page 3, lines 1-8), preparing a desiccant matrix comprising a regenerable desiccant in nonactive form, with no additional measures to reduce the moisture content of the ambient air space (page 4, lines 11-28), if desired performing further steps for producing a sheet form drying device comprising said desiccant matrix, these steps likewise being performed without additional measures to reduce the moisture content of the ambient air space, and subsequently activating the sheet form drying device (page 4, lines 28-37), said activating takes place by storing the sheet form drying device at increased temperature (page 5, lines 3-6), said activating takes place by irradiating the sheet form drying device with microwaves (page 5, lines 6-15), said activating takes place by a combination of storage at increased temperature and/or irradiation with infrared light and/ or irradiation with microwaves, with or without the use of additional measures comprising additional air circulation and/or reduced air circulation (page 5, lines 3-40), the use of a sheet form, activatable drying device for reducing or maintaining constant a defined moisture content of a closed gas space surrounding said device, said gas space surrounding said

Art Unit: 3749

device further comprises a moisture sensitive article, the moisture sensitive article is a food or drug, a diagnostic agent, a medicament, a chemical, or a biologically activatable material, the moisture sensitive article is a tablet, a transdermal therapeutic system, or a sheet form pharmaceutical administration form for oral use (page 4, lines 29-39, page 5, lines 1-2).

Claims 1, 18 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Inohara et al. Inohara et al shows a sheet form matrix having at least one regenerable desiccant present therein (fig.), said activation is further assisted by a reduced external pressure (col. 4, line 18) in a first step converting an activatable drying device, comprising a sheet form matrix having at least one regenerable desiccant, by activation into the active state (moisture absorbing material, fig.), in a further step placing the activatable drying device in the active state into the gas space whose moisture content is to be reduced and or whose moisture content is to be maintained (col. 3, lines 66-68), in a further step airtightly closing said gas space with respect to the surroundings (col. 4, lines 24-26), in a further step, the activatable drying device in the active state absorbs moisture from the airtightly closed gas space over a period of at least one hour (fig.).

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Incorvia et al. Incorvia et al shows a sheet form matrix having at least one regenerable desiccant present therein (fig. , col. 4, line 47), a layer of water vapor permeable material (col. 3, lines 1-4), a pressure sensitive adhesive layer (110, fig. 1), a protective layer (120, fig. 1), a support layer

Art Unit: 3749

(100, fig. 1), a backing layer (release liner (120, fig. 1), the desiccant matrix is elastic (col. 3, lines 6-9, col. 4, lines 31-41), the desiccant matrix is pressure sensitive adhesive (130, fig. 1), said sheet form matrix comprises a polymeric material (col. 4, lines 21-31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Incorvia et al. Incorvia et al discloses a sheet form matrix having at least one regenerable desiccant present therein (fig. , col. 4, line 47). Incorvia et al discloses applicant's invention substantially as claimed with the exception of the sheet form matrix present therein has a height of between about .050 mm and 3 mm. . It would have been an obvious matter of design choice to modify Incorvia et al to provide the sheet form matrix present therein has a height of between about .050 mm and 3 mm, since applicant has not disclosed that the size of the matrix solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art, since the size of Incorvia et al will perform the invention as claimed by the applicant.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Incorvia et al in view of Hankinson et al. Incorvia et al discloses a sheet form matrix having at least one regenerable desiccant present therein (fig. , col. 4, line 47). Incorvia et al discloses applicant's invention substantially as claimed with the exception of said activation is further assisted by a

Art Unit: 3749

reduced external pressure. Hankinson et al teaches said activation is further assisted by a reduced external pressure (col. 1, lines 48-53) for the purpose of reducing the activation time period to speed up the process. It would have been obvious to one of ordinary skill in the art to modify Incorvia et al by including said activation is further assisted by a reduced external pressure as taught by Hankinson et al for the purpose of reducing the activation time period to speed up the process.

Allowable Subject Matter

Claim 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Birbara et al shows a regenerable sorbent. Tronstad, Lang, Hillemeir et al show a drying device. Matsubara shows a dehydrating sheet. Manos shows a membrane. Shores shows a method of providing a moisture free enclosure. Sauro et al shows a non recloseable package. Strain shows a moisture control device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30-4:30 M-F.

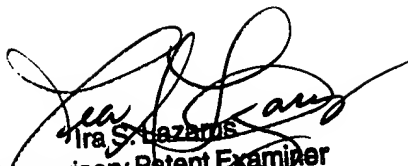
Application/Control Number: 09/937,457

Page 8

Art Unit: 3749

KBR

January 14, 2002


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